

## Employing staff

Any owner of a business quickly discovers that there are more laws - and more potential legal pitfalls - in relation to employment than almost any other aspect of commercial life.

Employers need to be up to date as new obligations are introduced frequently in this area and the extent of those obligations is clarified and developed through case law and regulations.

It is important to be aware throughout the employment relationship of the duties that you have as an employer to your potential employees, to the people already employed by you and to the people whose employment you may wish to bring to an end. In some circumstances (for example under discrimination law) you also have duties to contractors and agency workers even if they are not directly employed by you.

It is not all one way. Employees have duties and obligations to you, their employer, and also to their fellow employees. Employers have a right to take reasonable steps to protect their businesses from the actions of employees, for example if they leave to work for a competitor or if they commit serious acts of misconduct.

A well-drafted contract of employment geared to the particular role of the individual employee is crucial to protecting your business interests and to reducing the potential for dispute. In addition, clearly drafted policies and procedures on specific areas such as sickness absence, handling of grievance and disciplinary issues, health and safety, equal opportunities etc. will greatly assist when faced with these events.

Bringing the employment relationship to an end for reasons connected with the individual employee (eg competence, conduct) or for reasons connected with your business (eg redundancy) can seem like walking through a minefield. Provided you have sound reasons for your action and you follow a fair procedure, legal disputes - and the associated costs - can be avoided.

This leaflet highlights some of the key issues to be aware of throughout the employment relationship

## Before employment begins

### Are you advertising a position?

If yes...

Make sure that your advertisement and recruitment process do not discriminate against applicants on any of the prohibited grounds: sex, race, disability, religious belief, sexual orientation or age.

### Is the applicant from overseas?

If yes...

Take care! It is a criminal offence to employ someone in breach of their visa conditions.

### Have you set out the terms of employment in a written document?

If no...

You must do so; it is a requirement for every employee under

the Employment Rights Act 1976. It is also good practice to set out employees' duties in job descriptions.

### Do you need to protect your business from competitors?

If yes...

Ensure your employment contract protects trade secrets, but avoids unfair restrictions on employees seeking alternative employment.

### Are you recruiting a key member of staff, eg a director?

If yes...

Contractual provisions appropriate to responsibility and knowledge are important. Consider insurance protection against death or critical illness.

### Are you planning to offer share options?

If yes...

Take care! This may have serious tax and ownership implications for the company.

### Have you acquired staff through the purchase of business?

If yes...

Take care! Employees' existing contractual rights may be protected under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

## During employment

### Are you aware of minimum wage and working time regulations?

If no....

Take care! You are required to pay the minimum wage and give all employees paid holiday.

### Is the employee complaining of discrimination in the workplace?

If yes...

You may be liable for the actions of your staff. Investigate and take necessary action, following a grievance procedure.

### Has the employee had an accident at work?

If yes...

You may be liable (see the Health & Safety leaflet).

### Has the employee informed you of a disability?

If yes...

Consider whether any adjustments are needed to the workplace.

### Is the employee absent on long-term sick leave?

If yes...

Make enquiries before taking action. Consider the possibility of disability and making reasonable adjustments to enable return to work.

### Is the employee pregnant?

If yes...

Maternity rights apply. Consider health and safety aspects and, if necessary, offer other employment.

## Ending employment

### Are you dissatisfied with the employee's conduct?

If yes...

You may be able to dismiss the employee immediately if gross misconduct has occurred as defined in their contract. If the

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conduct is less serious, consider giving a warning, either oral or written. Follow disciplinary procedures.

## Do you need to implement redundancies?

If yes...

Employees with more than two years service are entitled to a redundancy payment. Redundancy selection and consultation procedure must be followed.

## Is the employee approaching retirement age?

If yes....

You must comply with the procedures set out in the Employment Equality (Age) Regulations 2006.

## Have you informed the employee of the circumstances leading to dismissal?

If no...

Statutory procedures require that you do so in writing and that you invite the employee to a meeting and provide an opportunity for appeal.

## Checklist

- Do you have a contract of employment drafted by a solicitor?
- Do you have clear, written procedures in the event of having to dismiss a member of staff?
- Have you taken into account the risk of your trade secrets being taken to a competitor if the employee leaves?
- Do you know the latest rules on maternity rights, minimum wage and working time?
- Have you made sure that you are not contravening anti-discrimination legislation on sex, race, disability, religious belief, sexual orientation and age?
- Is your tax treatment of contractors or temporary staff water-tight?
- Does your staff share option scheme put your control of the business at risk?
- Are you familiar with TUPE which can affect the way you treat staff of an acquired business?
- Do you have an up to date, effective e-mail/internet use policy?
- Are you aware of the rights of employees to require disclosure of information under the Data Protection Act?

As always, sound advice in the early planning stages pays dividends. Just ask your local LFYB member solicitor what can be done to help your business succeed.

## Lawyers For Your Business (LFYB)

Lawyers For Your Business (LFYB) represents around 1,000 firms of solicitors in England and Wales which have come together to help ensure that all businesses, and especially the small to medium sized ones, get access to sound legal advice whenever they need it.

LFYB is managed and promoted by the Law Society and has been welcomed as a positive initiative by the Department for Business, Enterprise and Regulatory Reform, Chamber of Commerce, the Federation of Small Businesses and many other agencies and trade associations that are active in the small and medium sized business market.

We recognise that, for fear of running up large legal bills, a business will often not consult a solicitor until they have a serious problem. By then, of course, any remedy may be at its most expensive, if indeed one is still available.

In most cases businesses can save themselves money by seeing a solicitor for advice early on, especially where there is legislation to be complied with, or important legal documents such as contracts to be prepared. To remove the risk of incurring unexpectedly high legal costs LFYB members offer a free consultation, lasting at least half an hour, to diagnose the problem and any need for action, with full information, in advance, on the likely costs of proceeding.

## How to gain your free half hour consultation

For a list of solicitors in your area who are Lawyers For Your Business members

call: 020 7405 9075

e-mail: [lfyb@lawsociety.org.uk](mailto:lfyb@lawsociety.org.uk)

visit: [www.lawsociety.org.uk/lfyb](http://www.lawsociety.org.uk/lfyb)

or write to us at:

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